

Appl. No. : **10/789,690**
Filed : **February 27, 2004**

REMARKS

In the Office Action mailed September 15, 2004, the Examiner objected to the Abstract and rejected Claims 1-10 under 35 U.S.C. § 102 and 35 U.S.C. § 103 in view of the Bergendahl reference (U.S. Patent Application Publication No. 2003/0222254), the Ernst et al. reference (U.S. Patent Application Publication No. 2003/0122115), or some combination thereof. By this paper, the Applicant has amended the Abstract and has further amended Claim 1 to incorporate limitations to overcome the Bergendahl and Ernst references. The Applicant has further cancelled Claims 2-5 and 8-10 and has also added new claims 11-12 to further define the invention. Hence, reconsideration of the above-captioned application in light of the amendments and remarks contained herein is now respectfully requested.

In the Office Action, the Examiner objected to the format of the Abstract as including claim terms. By this paper, the Applicant has cancelled the original Abstract and has submitted a substitute Abstract which is less than 150 words and does not include claim terms. Hence, the Application believes that the Abstract as submitted complies with all of the requirements for an Abstract.

In the Office Action, the Examiner also rejected Claims 1-4 and 8-10 under 35 U.S.C. § 102(e) as being anticipated by the Bergendahl reference. After carefully reviewing the Bergendahl reference, the Applicant notes that Bergendahl does not disclose a cap for the post that has an inward projection that is adapted to enter an opening formed at the top of the post to thereby secure the cap to the top of the post. In fact, there does not appear to be any such projection or opening formed in the cap or post of the Bergendahl reference. As a consequence, the Applicant does not believe that Bergendahl can anticipate Claim 1 as amended.

The Examiner also pointed to the Ernst et al. reference as teaching a projection which extends into an opening to secure the cover to a post-like structure. However, after carefully reviewing the Ernst et al. reference, the Applicant notes that Ernst et al. does not disclose an inward projection, rather the projection extends outwardly from the outer perimeter of the cap 11. As a consequence, the deformation of the structure upon which the cap is mounted will more likely result in the protrusions being dislodged from the openings as the opening is formed in the exterior surface which is more exposed to the forces of collision.

In contrast, by forming the protrusions so as to extend inwardly such that the protrusions can be positioned within an opening formed on an interior surface, the likelihood that the

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protrusion will be dislodged from the opening in the Applicant's invention is reduced. As a consequence, the cap is less likely in the Applicant's invention to be dislodged as a result of contact with a vehicle. For this reason, the Applicant believes that Claim 1 as amended is allowable over the art of record.

By this paper, the Applicant has also added Claim 11 to further define the invention and, in particular, to define the post as having an I-shaped cross-section with the cap having a projection that extends inwardly so as to be positionable within an opening formed in the interior intermediate portion of the I-shaped cross-section post. This particular configuration further highlights the reduced likelihood of the cap being dislodged as a result of a vehicle collision with the post. Moreover, neither Bergendahl or Ernst or any combination thereof disclose this configuration of post and cap nor the positioning of the opening and projection in the claimed location.

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SUMMARY

For the foregoing reasons, the Applicant believes that Claims 1 and 11 are allowable over the art of record. The Applicant further believes that the remaining claims define additional patentable subject matter and are further allowable due to their respective dependencies on Claims 1 and 11. The Applicant, therefore, believes that the above-captioned application is in condition for allowance and requests the prompt allowance of the same. Should there be any impediment to the prompt allowance of this application that could be resolved by a telephone conference, the Examiner is respectfully requested to call the undersigned at the number shown below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 1/17/05

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